

**NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.**  
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24.

FILED BY CLERK

JUL 30 2008

COURT OF APPEALS  
DIVISION TWO

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION TWO

JORGE ALVAREZ,

Petitioner,

v.

HON. BRADLEY M. SOOS, Judge of the  
Superior Court of the State of Arizona, in  
and for the County of Pinal,

Respondent,

and

THE STATE OF ARIZONA, by and  
through the Pinal County Attorney,

Real Party in Interest.

2 CA-SA 2008-0036

DEPARTMENT A

DECISION ORDER

SPECIAL ACTION PROCEEDING

Pinal County Cause No. CR200800963

JURISDICTION ACCEPTED; RELIEF GRANTED

Mary Wisdom, Pinal County Public Defender  
By Lisa M. Stronawski

Florence  
Attorneys for Petitioner

James P. Walsh, Pinal County Attorney  
By Greg Bizzozero

Florence  
Attorneys for Real Party in Interest

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¶1 In this special action, petitioner Jorge Alvarez, the defendant in the underlying criminal proceeding, claims the respondent judge exceeded his jurisdiction and legal authority by increasing Alvarez’s secured bond amount from \$2,500 to \$25,000 without providing Alvarez an opportunity to be heard and without notice to the alleged victim. Alvarez has no adequate remedy by appeal as to the pre-trial incarceration issues he raises, *see Fragoso v. Fell*, 210 Ariz. 427, ¶ 3, 111 P.3d 1027, 1029 (App. 2005), therefore we accept jurisdiction of this special action. *See* Ariz. R. P. Spec. Actions 1(a). The real party in interest State of Arizona concedes the respondent erred and because we agree, we grant Alvarez relief. *See* Ariz. R. P. Spec. Actions 3(b) (among questions appropriately raised in special action is “[w]hether the [respondent] has proceeded . . . without or in excess of jurisdiction or legal authority”).

¶2 Rule 7.4(b), Ariz. R. Crim. P., provides: “The court may, on motion of any party, or on its own initiative, modify the conditions of release after giving the parties an opportunity to respond to the proposed modification.” Under the plain language of the rule, the superior court must provide the parties an opportunity to be heard before modifying the

conditions of release on its own initiative. *See Cullinan v. Avalos*, 20 Ariz. App. 454, 456, 513 P.2d 1337, 1339 (1973). It is undisputed that the respondent judge did not provide Alvarez an opportunity to respond to the proposed modification of his release conditions.

¶3 Alvarez also asserts that the alleged victim’s right to notice was violated here as well. But because we have resolved this special action based on Alvarez’s lack of an opportunity to be heard, we need not determine whether Alvarez has standing to raise the second issue, or whether the claim has merit. Additionally, although Alvarez insists Rule 7.4(b) entitles him to a hearing, we need not address this question or determine the meaning of “opportunity to respond” in Rule 7.4(b) before the respondent judge has ruled on that matter. *See State v. Timmons*, 209 Ariz. 403, ¶ 20, 103 P.3d 315, 320 (App. 2005) (refusing to address issue related to sentencing that was “not ripe for appeal” because resentencing had not taken place and issue had not yet been decided by trial court). But, the parties might find *Mendez v. Robertson*, 202 Ariz. 128, 42 P.3d 14 (App. 2002), instructive.

¶4 For the reasons stated above, we grant Alvarez’s petition for special action relief and vacate that portion of the respondent’s May 30, 2008 order increasing his secured bond.

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JOSEPH W. HOWARD, Presiding Judge

Judge Brammer and Judge Vásquez concurring.